

(2021) 04 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 20760 Of 2017 (GM-RES-PIL)

Mahejabeen & Others

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 17-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 04 KAR CK 0065

Hon'ble Judges : Abhay S. Oka, CJ; S. Vishwajith Shetty, J

Bench : Division Bench

Advocate : Irfana Nazeer, V. Sreenidhi, M.N. Kumar, A. Mahesh Chowdary, T.N. Raghupathy

Final Decision : Disposed Of

Judgement

Abhay S. Oka, CJ

1. By this petition under Article 226 of the Constitution of India filed in the nature of a Public Interest Litigation, the petitioners who are the residents

of Ballari city have raised an objection for construction of a fish market by the Ballari City Corporation (for short, "the Corporation"). The

objection is for construction of a "New Modern Hygienic Model Wholesale cum Retail Fish Market" (for short "the fish market") in Ballari

city.

2. The fish market is sought to be constructed on a land vesting in the Government of Karnataka. It was decided that the Corporation will construct

the fish market. It appears that the third respondent, the National Fisheries Development Board, has agreed to sanction a sum of rupees 123.46 lakhs

for the said project. After sanction of funds by the third respondent, the seventh respondent who is the contractor started the construction work.

Subsequently, the work has been stopped.

3. It is urged in the petition that the construction of the fish market is sought to be carried out on or near a Raja Kaluve. It is stated that the site of the

said market is adjacent to a school of HUDA Education Trust. It is urged that the proposed construction of the fish market is in the residential area. It

is submitted that the construction of the fish market will lead to congestion of the road leading to the city and vehicular traffic will be blocked. It is

stated that during the school hours, it will create a congestion thereby posing a danger to the students. It is also contended that the fish market being

close to Raja Kaluve will lead to pollution. It is alleged that it would cause health hazard to the children taking education in the nearby school. It is

stated that the fish market is being constructed by encroaching upon the existing road. It is alleged that even the Deputy Commissioner of the District

has taken a firm stand that the fish market should not be constructed at the location which is proposed.

4. There are three main prayers made in the writ petition which read thus:

â??(i) Call for entire records from the Respondent No.2, 5, 6 and 7 and issue a writ of mandamus directing the Respondent No.2, 5, 6 and 7 as not to

construct the Fish Market on the bank of Nalla Cheruvu area â?" Raja Kaluve, storm drain water channel, just opposite to Mahammadiya Educational

Institution, Cowl Bazar, Ballari city, in the interest of justice and equity.

(ii) Issue a writ of mandamus directing the Respondents 2, 4, 5 to consider the representations of the petitioners and other respondents/educational

institutions submitted vide Annexure-C, D, E, G, J, J-1 and L dated 02.07-2015, 08-07-2015, 12-07-2015, 25-07-2015, 23-09-2015 and 25-03-2017

respectively, in the interest of justice and equity.

(iii) Issue a writ of mandamus directing the respondent No.4, the Pollution Control Board to consider the representation of the public in respect of vide

Annexure-F and H dated 16-04-2015 and 30-07-2015 respectively, in the interest of justice and equityâ??.

5. The statements of objections have been filed by the first to third respondent, fifth and sixth respondent. In addition, there are affidavits filed on record.

6. Before we go to the submissions made by the learned counsels appearing for the parties, it will be necessary to make a reference to the orders

passed by this Court from time to time. The submissions were substantially heard on 7th December, 2020 made by the then the learned counsel

appearing for the petitioners, Shri. N.P. Amruthesh. Thereafter, on 8th December, 2020, the following order was passed:

2. The grievance made in this writ petition in the nature of Public Interest Litigation is as regards the decision of the concerned respondents to set up fish market near Raja Kaluve and Storm Water Drain, more particularly described in the petition. The grievances made in the petition, in short, are as under:

- (a) Considering the proximity of the proposed market to a school run by Huda Educational Minority Society, hundreds of students will be exposed to danger as the main approach road will get congested;
- (b) Construction of fish market is proposed in such a manner that it will encroach upon the adjacent public road and it will reduce the width of the public road which will lead to traffic congestion, traffic block, noise pollution, etc;
- (c) The construction will affect the adjacent Raja Kaluve and Storm Water drain;
- (d) The proposed fish market if becomes operational, will create pollution.

6. Before we dispose of the matter on merits, we deem it appropriate to pass the following directions:

(i) We direct the Deputy Commissioner of the District to look into the following aspects:

- (a) Whether the width of the public road adjacent to the proposed fish market will be reduced as a result of the construction of the fish market?
- (b) Whether the construction of fish market will lead to traffic congestion on the road adjacent to the site of the proposed fish market?
- (c) If such a fish market is allowed to be constructed, what steps should be taken to protect the Raja Kaluve and the Storm Water Drain?

(ii) The Deputy Commissioner along with the officials of the Karnataka State Pollution Control Board and the third respondent as well as the other

parties to shall take inspection of the site, thereafter, the Deputy Commissioner shall give an opportunity of being heard to all the parties to the petition;

(iii) Appropriate orders shall be passed by the Deputy Commissioner on the aforesaid aspects by 27th January, 2021;

(iv) We also direct the Karnataka State Pollution Control Board to examine the matter with a view to ascertain whether setting up of fish market at

the proposed site will create pollution and in what manner the Raja Kaluve can be protected;

(v) Even the State Pollution Control Board shall submit the report by 27th January 2021;

(vi) Copies of the reports submitted by the Deputy Commissioner and the State Pollution Control Board shall be supplied to the Counsel appearing for the parties by 30th January 2021.â??

Thereafter, reports have been submitted by the Deputy Commissioner and the Karnataka State Pollution Control Board. When the petition was listed

on 12th March, 2021 for further hearing, an adjournment was sought by the learned counsel for the petitioners on the ground that the petitioners have

taken away the papers from him and he has given no objection to engage another Advocate. The order passed on that day reads thus:

â??The counsel for the petitioners states that on Saturday (6th March 2021), the petitioners have taken away the papers from him along with No

Objection Certificate vakalath. The learned counsel Sri. Nazeer appears through video conferencing and states that he has received telephonic

instructions to appear for the petitioners.

We have perused the order sheet starting from the order dated 7th December 2020. In fact, after fully hearing the submissions, the case was

adjourned to 8th December 2020 for hearing further submissions. Litigants cannot create an obstruction in the way of disposal of cases by

withdrawing the papers from their advocates in this fashion. In fact, it is the discretion of the Court whether to permit an advocate to retire or not.

List the petition on Tuesday (16th March 2021) at 4.45 p.m before the same Bench.

We make it clear that no adjournment will be given to the petitioners under any circumstance on any ground.â??

Ultimately, on 16th March, 2021, Smt. Irfana Nazeer, the learned counsel appeared and made her further submissions.

7. The submissions of the learned counsel for the petitioners will have to be reproduced in brief. It is submitted that though the proposed construction

of fish market is sponsored by the third respondent, while implementing the project, the Guidelines for Domestic Marketing issued by the third

respondent have been completely violated. It is pointed out that as per the

guidelines of the third respondent, twenty cent of land has to be provided for parking space for facilitating parking of 20 trucks to be parked at the same time. It is submitted that the third respondent is going to provide public money for construction of fish market and, therefore, without abiding by the guidelines issued by the third respondent, the fish market cannot be constructed. It is pointed out that if the said guidelines are to be followed strictly, the fish market cannot be constructed. It is pointed out that even the environmental officer of the Karnataka State Pollution Control Board (for short â?? the KSPCBâ??) has raised an objection that as no separate area for vehicle parking has been provided, establishment of the fish market will lead to traffic congestion. Moreover, he has observed that if the market is not operated properly by following the conditions specified in the guidelines for maintaining cleanliness, it will create bad smell and cause nuisance in the surrounding area. It was submitted on behalf of the petitioners that even in the report along with the sketch submitted by the environmental officer of the Pollution Control Board, the existence of a storm water drain measuring about 4.20 meters in width is accepted by the environmental officer. It is pointed out that even the Deputy Commissioner, in his proceedings, has categorically accepted the existence of a Storm Water Drain very close to the site of the fish market. It is pointed out that the Commissioner of the Corporation of Ballari has failed to notice that the road also leads to the railway station. If the construction of the fish market is permitted, the resultant traffic congestion will adversely affect the students of HUDA school, the residents of Harihant layout and the commuters travelling to and from the railway station. It is also pointed out that though the Deputy Commissioner has claimed that a sum of rupees 60 lakhs has already been spent on the construction, there is no documentary evidence placed on record to substantiate the same. The petitioners have relied upon the sketch prepared by the Assistant Executive Engineer of the Corporation of Ballari produced along with counter affidavit of the petitioners dated 29th September 2021 which shows that the proposed fish market is very close to the storm water drain and the school. It is submitted that the said sketch shows that there will be a huge traffic congestion.

8. We have heard the submissions of the learned counsel appearing for the 5th and 6th respondents who has pointed out several factual aspects for

satisfying the Court why interference at the hands of this Court is not necessary. We have also heard the learned Additional Government Advocate for the 1st and 2nd respondents (the State Government and the Deputy Commissioner), the learned counsel appearing for the 3rd respondent (the National Fisheries Development Board) and the learned counsel appearing for the 4th respondent (the KSPCB).

9. We have carefully considered the submissions made across the Bar. As noted earlier, the issue involved in this public interest litigation revolves around the project of construction of the fish market in Ballari city. It is not the function of a writ Court to decide where exactly a market should be located. Normally, it is best left to the local authorities or the State Government to take a decision in the larger interest of the general public. The decision of setting up a market involves consideration of large number of factors. A writ Court can interfere with such a decision either when any illegality is associated with the project of construction of a market or when the decision making process is illegal.

10. Firstly, it is necessary to refer to a report filed by the environmental officer of KSPCB. He has submitted a report after taking inspection on 7th January, 2021 in the presence of the representatives of the petitioners, the Secretary of HUDA Education Society and the Engineers/Officers of the Corporation. He has annexed a sketch showing the location of the proposed fish market. On perusal of the same, it appears that the distance between storm water drain from the proposed fish market varies between 0.6 meters and 0.9 meters. The compound of the school and college is situated at a distance of 12.80 meters. He has raised as many as three objections. The first objection is that establishment of fish market may cause bad smell thereby creating nuisance in the surrounding area, if it is not operated properly. Secondly, as there is no separate vehicle parking facility, the establishment of the fish market will lead to traffic congestion and thirdly, fish washing water and other waste from the fish market may enter into the storm water drain, as the same is located very close to fish market. The last ground is regarding the failure to follow the guidelines laid down by the third respondent.

11. The report of the Environmental Officer raises an objection regarding possible traffic congestion, discharge of waste water into nearby drain and

possibility of creation of bad smell. The Deputy Commissioner of Ballari District has filed a copy of the proceedings dated 25th January, 2021 in which

it is recorded that a meeting of all the stakeholders including the writ petitioners was convened after serving a notice to them. In the proceedings, he

has noted that the construction of a vegetable market abutting the property of the school of HUDA is already in progress for which, no one has raised

any objection. He has mentioned that the revenue records shows that there is no Raja Kaluve by the side of the fish market, but there is only a storm

water drain close to the fish market in which water will flow only during rainy season. He has also recorded that the proposed fish market is a most

modern project which is proposed to be constructed at the cost of Rs.196.69 lakhs and it is noted that the Corporation being a custodian of the health

of the citizens and general public will take necessary precautions for managing the said fish market. It is also recorded in the proceedings that the

residential premises of the members of the Jain community are far away from the location of the fish market. It is further noted therein that the layout

developed in T.S.No.8 and 28 is a most modern layout which has many government buildings, cricket stadium, swimming pool, Ranga Mandira and the

layout has very wide roads. It is stated that at present, fishermen are selling the fish on the footpaths of the city as well as on the foot path adjacent to

the site of the proposed fish market. Therefore, the Deputy Commissioner expressed his inability to shift the proposed fish market elsewhere.

12. In terms of the order dated 9th February, 2021, the Deputy Commissioner of the District has looked into the observations made by the

environmental officer of the KSPCB and filed a compliance report dated 16th February, 2021 with reference to the observations made by the

environmental officer of the KSPCB. He has stated that in place of accessibility area, the distance between the proposed fish market and the storm

water drain is of 1.5 meters width. He has stated that the storm water drain will be strengthened by covering with concrete slabs/blocks. He has

further stated that the fish washing water and other waste from the fish market will be treated in the proposed fish market itself and for that purpose,

a separate Effluent Treatment Plant is proposed to be installed in the very project for processing fish waste and other related wastes and that the

treated effluents will be connected to the nearby existing underground drainage network. Therefore, he has ruled out the possibility of waste water

entering in the storm water drain. The Deputy Commissioner has relied upon a sketch annexed to the report in which he has shown the location for

parking site near the proposed fish market and contended that there is no substance in the allegations made by the petitioners as regards the possible traffic congestion.

13. As regards the presence of nearby school, in the order dated 8th December, 2020, this Court has already dealt with the said grievances in

paragraph-3 of the said order which reads thus:

“3. As far as possible danger to school children is concerned, we need not go into the said question as the HUDA Educational Minority Society has

filed W.P.No.106343/2017 before Dharwad Bench raising the issue regarding the illegality of the decision to construct the fish market. A copy of the

petition is placed on record which contains several grievances, but there is no grievance made that the students will be affected due to the shortening

of the width of the public road.”

(underlines added)

14. A copy of the writ petition filed by the school authorities is available on record. The specific prayer in the said writ petition is for issue of a writ of

mandamus directing the respondents to take action as per the representation made on 25th March 2017 and to stop the construction of fish market

which is the subject matter of this writ petition. Therefore, the issue regarding possibility of inconvenience caused to the students cannot be gone into

this petition. Moreover, there is no concrete material placed on record to show that the construction of the fish market will cause any harm to the

students. There is another market coming up close to the school as stated by the Deputy Commissioner.

15. It is also pointed out that the petitioner No.19 in this petition has instituted a civil suit in O.S.No.58/2016 before the Civil Court at Ballari. The

prayer in the said suit is for permanent injunction to restrain the Deputy Commissioner Ballari and the Commissioner of Ballari City Municipal

Corporation, who are the 2nd and 5th respondents in this petition from constructing the fish market which is the subject matter of this petition. He has

claimed that he belongs to Jain community. There is no material placed on record of this petition to show that the members of the Jain community will

be adversely affected.

16. The 3rd respondent (National Fisheries Development Board) has filed a statement of objections placing on record the sanction order dated 10th

January, 2014 issued by the 3rd respondent by which, a sanction is accorded for an amount of Rs.123.46 lakhs for the said project. Along with the

statement of objections, a copy of the Indian Standard Fish Industry - Operational Cleanliness and Layout of Market "Guidelines has been annexed.

The said guidelines lays down the parameters regarding the location of the fish market and facilities to be provided in the fish markets.

17. We must note here that as per the proceedings of the Deputy Commissioner dated 25th January, 2021, the existence of Raja Kaluve near the

proposed site of the fish market has not been established. However, admittedly, a storm water drain is in existence near the proposed fish market.

This Court, by the Order dated 9th February, 2021 directed the parties including the Deputy Commissioner to file objections, if any, to the report

submitted by the State Pollution Control Board. In pursuance of the said order, the Deputy Commissioner Ballari District filed a memo dated 23rd

February, 2021 along with a copy of the compliance report dated 16th February 2021 in which, there is an assurance from the Deputy Commissioner

that the portion of the Storm Water Drain which is located near the fish market will be covered with concrete slabs. As regards parking, a sketch is

placed on record by the Deputy Commissioner showing that a parking area has been demarcated. He has stated that the fish market will be provided

with a scientific way of disposal of fish waste which will be monitored by the Corporation officials every day and there is an assurance to set up an

Effluent Treatment Plant which will be a part of the same project for processing fish waste and other related wastes of the fish market and that

treated effluents will be discharged into the nearby existing underground drainage system. The issue of parking and discharge of effluents is taken

care of these assurances. The Effluent Treatment Plant will take care of the apprehension regarding creation of bad odour. Even assuming that there

is some possibility of traffic congestion, the traffic can always be regulated.

18. Therefore, we see no illegality in the project of construction of the fish market warranting interference by this Court. If the Ballari City

Corporation is not abiding by the guidelines of the 3rd respondent (National Fisheries Development Board) or the conditions imposed by the 3rd

respondent for sanction for financial assistance for the project, it will always open to the 3rd respondent to take appropriate action in accordance with law.

19. We do not find that this is a case of any illegalities associated with the decision making process. While we are not interfering with the decision to construct the fish market, certain safeguards will have to be provided to protect the interests of the public at large as per the assurances given by the Deputy Commissioner and the Commissioner of the City Corporation, Ballari. Hence, we dispose of the petition by passing the following:

ORDER

(i) We hold that there is no illegality in the project of construction of the fish market which is the subject matter of this petition;

(ii) We direct the Deputy Commissioner, Ballari (respondent No.2) and the Ballari City Corporation to ensure that parking space as earmarked in the sketch annexed to the compliance report of the Deputy Commissioner dated 16th February, 2021 is made available exclusively for the fish market;

(iii) The Deputy Commissioner (2nd respondent) and the City Corporation, Ballari shall ensure that an Effluent Treatment Plant is constructed for dealing with fish washing water as well as other waste of the fish market and the said plant shall be fully commissioned simultaneously with the commencement of the functioning of the market;

(iv) The City Corporation of Ballari city shall ensure that the fish washing water and other waste from the fish market is not allowed to flow directly into the nearby storm water drain and that the fish market shall be operated in such a manner that absolute cleanliness is maintained and no nuisance is created in the area;

(v) The State Government shall ensure that the working of the fish market does not cause any traffic congestion in the locality and therefore, after the fish market becomes operational, traffic Police shall be always deputed every day on the road near the market to avoid possibility of any traffic congestion;

(vi) If the City Corporation of Ballari has committed any breach of the terms and conditions on which the financial assistance was sanctioned by the

3rd respondent, it is always open for the 3rd respondent to take appropriate action in accordance with law;

(vii) There shall be no order as to the costs.